

Citation
38 USCA S 4104
38 U.S.C.A. § 4104

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TITLE 38. VETERANS' BENEFITS
PART V--BOARDS AND DEPARTMENTS
CHAPTER 73--DEPARTMENT OF MEDICINE AND SURGERY
SUBCHAPTER I--ORGANIZATION; GENERAL

§ 4104. Additional appointments

There shall be appointed by the Administrator additional personnel as the Administrator may find necessary for the medical care of veterans, as follows:

- (1) Physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries;
- (2) Psychologists (other than those described in paragraph (3) of this section), dietitians, and other scientific and professional personnel, such as microbiologists, chemists, biostatisticians, and medical and dental technologists;
- (3) Clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Administrator, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.

(Pub.L. 85-857, Sept. 2, 1958, 72 Stat. 1244; Pub.L. 89-785, Title I, § 104, Nov. 7, 1966, 80 Stat. 1369; Pub.L. 94-123, § 5(a), Oct. 22, 1975, 89 Stat. 675; Pub.L. 94-581, Title I, § 110(3), Title II, §§ 209(a)(1), (2), 210(c)(3), Oct. 21, 1976, 90 Stat. 2848, 2860, 2863.)

(As amended Pub.L. 96-151, Title III, § 302(a), Dec. 20, 1979, 93 Stat. 1096; Pub.L. 98-160, Title II, § 201, Nov. 21, 1983, 97 Stat. 1000; Pub.L. 98-528, Title I, § 108, Oct. 19, 1984, 98 Stat. 2690; Pub.L. 100-322, Title II, § 211(a), May 20, 1988, 102 Stat. 513, 514.)

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38 U.S.C.A. § 4106			

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**TITLE 38. VETERANS' BENEFITS
PART V--BOARDS AND DEPARTMENTS
CHAPTER 73--DEPARTMENT OF MEDICINE AND SURGERY
SUBCHAPTER I--ORGANIZATION; GENERAL**

§ 4106. Period of appointments; promotions

(a) Appointments of physicians, dentists, podiatrists, optometrists, and nurses shall be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Administrator, without regard to civil-service requirements.

(b) Such appointments as described in subsection (a) of this section shall be for a probationary period of two years and the record of each person serving under such appointment in the Medical, Dental, and Nursing Services shall be reviewed from time to time by a board, appointed in accordance with regulations of the Administrator, and if said board shall find such person not fully qualified and satisfactory such person shall be separated from the service.

(c) Promotions of physicians, dentists, podiatrists, optometrists, and nurses shall be made only after examination given in accordance with regulations prescribed by the Administrator. Advancement within grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Administrator.

(d) In determining eligibility for reinstatement in Federal civil service of persons appointed to positions in the Department of Medicine and Surgery, who at the time of appointment shall have a civil-service status, and whose employment in the Department of Medicine and Surgery is terminated, the period of service performed in the Department of Medicine and Surgery shall be included in computing the period of service under applicable civil-service rules and regulations.

(e) In accordance with regulations prescribed by the Administrator, the grade and annual rate of basic pay of a physician, dentist, podiatrist, optometrist, or nurse changed from a level of assignment where the grade level is based on both the nature of the assignment and personal qualifications, may be adjusted to the grade and annual rate of basic pay otherwise appropriate.

(f) The provisions of this section shall apply to physician assistants and expanded-duty dental auxiliaries.

(g)(1) Upon the recommendation of the Chief Medical Director, the Administrator (A) may use the authority in subsection (a) of this section to establish the qualifications for and (subject to paragraph (2) of this subsection) to appoint individuals to positions listed in section 4104(3) of this title, and (B) may use the authority provided in subsection (c) of this section for the promotion and advancement of Veterans' Administration employees serving in such positions.

(2) In using such authority to appoint individuals to such positions, the Administrator shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(3) Notwithstanding any other provision of this title or other law, all matters relating to adverse actions, disciplinary actions, and grievance procedures involving individuals appointed to such positions (including similar actions and procedures involving an employee in a probationary status) shall be resolved under the provisions of title 5 as though such individuals had been appointed under such title.

(h)(1) The Secretary may appoint in the competitive civil service without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title) an individual who--

(A) has a recognized degree or certificate from an accredited institution in a health-care profession or occupation; and

(B) has successfully completed a clinical education program affiliated with the Department.

(2) In using the authority provided by this subsection, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(Pub.L. 85-857, Sept. 2, 1958, 72 Stat. 1245; Pub.L. 89-785, Title I, § 106, Nov. 7, 1966, 80 Stat. 1369; Pub.L. 94-123, § 5(c), Oct. 22, 1975, 89 Stat. 675; Pub.L. 94-581, Title I, § 110(5), Title II, §§ 209(a)(1), (b)(1), Oct. 21, 1976, 90 Stat. 2848, 2860, 2861.)

(As amended Pub.L. 96-151, Title III, § 303, Dec. 20, 1979, 93 Stat. 1096; Pub.L. 98-160, Title II, § 203(a), Nov. 21, 1983, 97 Stat. 1000; Pub.L. 99-576, Title VII, § 701(86), Oct. 28, 1986, 100 Stat. 3298; Pub.L. 100-322, Title II, § 221, May 20, 1988, 102 Stat. 531; Pub.L. 101-237, Title II, § 203, Dec. 18, 1989, 103 Stat. 2067.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Derivation. Based on Title 38, U.S.C., 1952 ed., Supp. V, § 3406 (Pub.L. 85-56, Title XIV, § 1406, June 17, 1957, 71 Stat. 132).

Earlier Laws. Corresponding provisions in prior law were contained in § 15e(a) to (c), (e) of former Title 38, Pensions, Bonuses, and Veterans' Relief (Act Jan. 3, 1946, c. 658, § 6(a) to (c), (e), 59 Stat. 676).

References in Text. Subchapter I of chapter 33 of title 5, referred to in subsec. (g)(2), is subchapter I of chapter 33 [§ 3301 et seq.] of Title 5, Government Organization and Employees.

1988 Amendment. Subsec. (g)(3). Pub.L. 100-322 added par. (3).

1986 Amendment. Subsec. (b). Pub.L. 99-576, § 701(86), substituted "shall find such person not fully qualified and satisfactory such person shall" for

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38 U.S.C.A. § 4110			

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TITLE 38. VETERANS' BENEFITS
PART V--BOARDS AND DEPARTMENTS
CHAPTER 73--DEPARTMENT OF MEDICINE AND SURGERY
SUBCHAPTER I--ORGANIZATION; GENERAL

§ 4110. Disciplinary boards

(a) The Chief Medical Director, under regulations prescribed by the Administrator shall from time to time appoint boards to be known as disciplinary boards, each such board to consist of not less than three nor more than five employees, senior in grade, of the Department of Medicine and Surgery, to determine, upon notice and fair hearing, charges of inaptitude, inefficiency, or misconduct of any person employed in a position provided in paragraph (1) of section 4104 of this title. The majority of employees on a disciplinary board shall be employed in the same category of position as the employee who is the subject of the charges.

(b) The Administrator shall appoint the chairman and secretary of the board, each of whom shall have authority to administer oaths.

(c) The Chief Medical Director may designate or appoint one or more investigators, to assist each disciplinary board in the collection and presentation of evidence. Any person answering to charges before a disciplinary board may be represented by counsel chosen by such person.

(d) A disciplinary board, when in its judgment charges are sustained, shall recommend to the Administrator suitable disciplinary action, within limitations prescribed by the Administrator, which shall include reprimand, suspension without pay, reduction in grade, and discharge from the Department of Medicine and Surgery of such person. The Administrator shall either approve the recommendation of the board, approve such recommendation with modification or exception, approve such recommendation and suspend further action at the time, or disapprove such recommendation. The Administrator shall cause to be executed such action as the Administrator approves. The decision of the Administrator shall be final.

(e) The Administrator, within such limitations as the Administrator may prescribe, may delegate to the Chief Medical Director the authority vested in the Administrator by subsections (b) and (d) of this section to (1) appoint the chairman and secretary of a disciplinary board, such official to have the power prescribed by this section, and (2) receive and act upon the recommendations of such a board. Any person against whom disciplinary action is taken under authority delegated pursuant to this subsection shall have the right to appeal such action to the Administrator, but in the absence of such an appeal the decision of the Chief Medical Director shall have the same force and effect as a decision of the Administrator.

(Pub.L. 85-857, Sept. 2, 1958, 72 Stat. 1246; Pub.L. 88-207, Dec. 17, 1963, 77 Stat. 402.)

(As amended Pub.L. 98-160, Title II, § 205, Nov. 21, 1983, 97 Stat. 1001; Pub.L. 99-576, Title VII, § 701(88), Oct. 28, 1986, 100 Stat. 3299.)

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38 U.S.C.A. § 4114			

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**TITLE 38. VETERANS' BENEFITS
PART V--BOARDS AND DEPARTMENTS
CHAPTER 73--DEPARTMENT OF MEDICINE AND SURGERY
SUBCHAPTER I--ORGANIZATION; GENERAL**

§ 4114. Temporary full-time, part-time, and without compensation appointments; residencies or internships

(a)(1) The Administrator, upon the recommendation of the Chief Medical Director, may employ, without regard to civil service or classification laws, rules, or regulations--

(A) physicians, dentists, podiatrists, optometrists, nurses, physician assistants, expanded-function dental auxiliaries, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, occupational therapists, dietitians, social workers, librarians, and other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs) on a temporary full-time, part-time or without compensation basis; and

(B) physicians, dentists, podiatrists, optometrists, nurses, physician assistants, expanded-function dental auxiliaries, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists and occupational therapists, and other professional and technical personnel on a fee basis.

(2) Personnel employed under paragraph (1) of this subsection shall be in addition to personnel described in section 4103, paragraphs (1) and (3) of section 4104, and section 4111 of this title and shall be paid such rates of pay as the Administrator may prescribe.

(3)(A) Temporary full-time appointments of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries may exceed ninety days only if the Chief Medical Director finds that circumstances render it impracticable to obtain the necessary services through appointments under paragraph (1) of section 4104 of this title. Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing, approved by the Administrator, and are pending registration as a graduate nurse in a State, shall not exceed two years. Temporary full-time appointments of other personnel shall not exceed one year except as authorized in subparagraph (D) of this paragraph.

(B) No part-time appointment shall be for a period of more than one year, except for appointments of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, expanded-function dental auxiliaries, and interns, residents and other trainees in medical support programs and except as authorized in subparagraph (D) of this paragraph.

(C) A student nurse who has a temporary appointment under this paragraph and who is pursuing a full course of nursing in a recognized school of nursing approved by the Administrator may be reappointed for one year. Other personnel whose appointments are limited by this section to one year may not be reappointed under this subsection.

(D) During any period during which the Administrator is exercising the authority of only section 4106(a) and (g)(1) of this title in connection with the appointment, under section 4104(3) of this title, of personnel in a category of personnel described in such section 4104(3)--

(i) the Administrator may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Chief Medical Director finds that circumstances render it impractical to obtain the necessary

services through appointments under paragraph (3) of section 4104 of this title; and

(ii) part-time appointments of personnel in such category may be for periods of more than one year.

(b)(1) The Administrator shall have authority to establish residencies and internships; to appoint qualified persons to such positions without regard to civil-service or classification laws, rules, or regulations; and to prescribe the conditions of such employment, including necessary training, and the customary amount and terms of pay (which may be established retroactively based on changes in such customary amount and terms) during the period of such employment and training.

(2) For the purposes of this title, the term "internship" shall include the equivalency of an internship as determined in accordance with regulations which the Administrator shall prescribe, and the term "intern" shall mean a person serving an internship.

(3) In order to carry out more efficiently the provisions of paragraph (1) of this subsection, the Administrator may contract with one or more hospitals, medical schools, or medical installations having hospital facilities and participating with the Veterans' Administration in the training of interns or residents to provide for the central administration of stipend payments, provision of fringe benefits, and maintenance of records for such interns and residents by the designation of one such institution to serve as a central administrative agency for this purpose. The Administrator may pay to such designated agency, without regard to any other law or regulation governing the expenditure of Government moneys either in advance or in arrears, an amount to cover the cost for the period such intern or resident serves in a Veterans' Administration hospital of (A) stipends fixed by the Administrator pursuant to paragraph (1) of this subsection, (B) hospitalization, medical care, and life insurance, and any other employee benefits as are agreed upon by the participating institutions for the period that such intern or resident serves in a Veterans' Administration hospital, (C) tax on employers pursuant to chapter 21 of the Internal Revenue Code of 1954, (26 U.S.C. 3101 et seq.), where applicable, and in addition, (D) an amount to cover a pro rata share of the cost of expense of such central administrative agency. Any amounts paid by the Administrator to such central administrative agency to cover the cost of hospitalization, medical care, or life insurance or other employee benefits shall be in lieu of any benefits of like nature to which such intern or resident may be entitled under the provisions of title 5, and the acceptance of stipends and employee benefits from the designated central administrative agency shall constitute a waiver by the recipient of any claim such recipient might have to any payment of stipends or employee benefits to which such recipient may be entitled under this title or title 5. Notwithstanding the foregoing, any period of service of any such intern or resident in a Veterans' Administration hospital shall be deemed creditable service for the purposes of section 8332 of title 5. The agreement may further provide that the designated central administrative agency shall make all appropriate deductions from the stipend of each intern and resident for local, State, and Federal taxes; maintain all records pertinent thereto and make proper deposits thereof, and shall maintain all records pertinent to the leave accrued by such intern and resident for the period during which such recipient serves in a participating hospital, including a Veterans' Administration hospital. Such leave may be pooled, and the intern or resident may be afforded leave by the hospital in which such person is serving at the time the leave is to be used to the extent of such person's total accumulated leave, whether or not earned at the hospital in which such person is serving at the time the leave is to be afforded.

(c) When the Chief Medical Director determines that it is not possible to recruit qualified citizens for the necessary services, appointments under this section may be made without regard to the citizenship requirements of section 4105 of this title or of any other law prohibiting the employment of, or payment of compensation to, a person who is not a citizen of the United States.

(d)(1) Subject to paragraph (2) of this subsection, the Chief Medical Director may waive for the purpose of the appointment of an individual under this section the requirements set forth in section 4105(a) of this title--

(A) that a physician, dentist, psychologist, optometrist, registered nurse, practical or vocational nurse, or physical therapist be licensed or certified, as appropriate;

(B) that the licensure or certification of such an individual be in a State; and

(C) that a psychologist have completed an internship.

(2) The waivers authorized in paragraph (1) of this subsection may be granted--

(A) in the case of clauses (A) and (C) of such paragraph, if the individual (i) will be employed to conduct research or serve in an academic position, and (ii) will have no responsibility for furnishing direct patient care services; and

(B) in the case of clause (B) of such paragraph, if the individual will be employed to serve in a country other than the United States and the individual's licensure or registration is in the country in which the individual is to serve.

(e) The program of training prescribed by the Administrator in order to qualify a person for the position of full-time physician's assistant or expanded-function dental auxiliary shall be considered a full-time institutional program for purposes of chapter 34 of this title. The Administrator may consider training for such a position to be on a less than full-time basis for purposes of such chapter when the combined classroom (and other formal instruction) portion of the program and the on-the-job training portion of the program total less than 30 hours per week.

(f) No person may be appointed under this section after January 1, 1978, to an occupational category described in section 4104(1) of this title or in subsection (b) of this section unless such person meets the requirements established in section 4105(c) of this title and regulations prescribed thereunder.

(g) In accordance with the provisions of section 4119 of this title, the provisions of chapter 34 of title 5 shall not apply to part-time appointments under this section.

(Pub.L. 85-857, Sept. 2, 1958, 72 Stat. 1247; Pub.L. 87-574, § 4(2), Aug. 6, 1962, 76 Stat. 309; Pub.L. 89-785, Title I, § 111(a)-(c), Nov. 7, 1966, 80 Stat. 1371; Pub.L. 91-496, §§ 1, 3, Oct. 22, 1970, 84 Stat. 1092; Pub.L. 93-82, Title II, § 206, Aug. 2, 1973, 87 Stat. 192; Pub.L. 94-581, Title I, §§ 109, 110(10), Title II, §§ 205(g), 209(a)(6), (c)(6), 210(c)(7), Oct. 21, 1976, 90 Stat. 2848, 2849, 2859, 2860, 2862, 2864; Pub.L. 95-201, § 4(a)(2), Nov. 23, 1977, 91 Stat. 1430.)

(As amended Pub.L. 96-330, Title I, § 116(b), Aug. 26, 1980, 94 Stat. 1039; Pub.L. 97-295, § 4(85), Oct. 12, 1982, 96 Stat. 1312; Pub.L. 99-166, Title II, § 203, Dec. 3, 1985, 99 Stat. 950; Pub.L. 99-576, Title II, § 214, Oct. 28, 1986, 100 Stat. 3258; Pub.L. 100-322, Title II, § 223, May 20, 1988, 102 Stat. 531; Pub.L. 100-687, Title XV, § 1503(a)(2), Nov. 18, 1988, 102 Stat. 4133.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Derivation. Based on Title 38, U.S.C., 1952 ed., Supp. V, § 3414 (Pub.L. 85- 56, Title XIV, § 1414, June 17, 1957, 71 Stat. 135).

Earlier Laws. Corresponding provisions in prior law were contained in § 15m of former Title 38, Pensions, Bonuses, and Veterans' Relief (Acts Jan. 3, 1946, c. 658, § 14, 59 Stat. 679; June 19, 1948, c. 553, 62 Stat. 536).

References in Text. The civil service laws, referred to in subsecs. (a) and (b), are set forth in Title 5, Government Organization and Employees. See, particularly, § 3301 et seq. of that Title.

The classification laws, referred to in subsecs. (a) and (b), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

Chapter 21 of the Internal Revenue Code of 1954, referred to in subsec. (b)(3), is set out as chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code.

1988 Amendments. Subsec. (a)(1)(A). Pub.L. 100-687, § 1503(a)(2)(A)(i), added "pharmacists, occupational therapists," following "vocational nurses,".